

EXHIBIT 5

Court File No.

18-75823

**ONTARIO
SUPERIOR COURT OF JUSTICE**



BETWEEN:

EXPORT DEVELOPMENT CANADA

Applicant

- and -

**HNB INVESTMENT CORP. and
NATIONAL RAILROAD PASSENGER CORPORATION**

Respondents

NOTICE OF APPLICATION

APPLICATION UNDER RULE 14.05 OF THE *RULES OF CIVIL PROCEDURE*

TO THE RESPONDENTS

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing on a date to be fixed by the court at 161 Elgin Street, Ottawa, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO

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OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID
MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

MAR 13 2018

Date

Issued by

Local registrar

Superior Court of Justice
161 Elgin Street
Ottawa, Ontario K2P 2K1

TO HNB INVESTMENT CORP.
225 High Ridge Road, Suite 300 West
Stamford, CT 06905

NATIONAL RAILROAD PASSENGER CORPORATION
60 Massachusetts Avenue, NE
Washington, DC 20002

APPLICATION

1. The Applicant makes this application for:
 - (a) The determination of rights that depend on the interpretation of a contract and a declaration that the Guarantee Agreement (as described below) requires the occurrence of a “Triggering Event,” before payment can be due and payable under it;
 - (b) In the alternative, that this application be converted into an action, to determine whether and Export Development Corporation, now Export Development Canada (the “**Applicant**” or “**EDC**”), has any liability under the Guarantee Agreement, and with leave to the Applicant to file a fresh Statement of Claim;
 - (c) The costs of this application; and,
 - (d) Such further and other order as may seem just.
2. The grounds for the application are:
 - (a) On or about November 6, 2000, National Railroad Passenger Corporation (operating and referred to herein as “**Amtrak**”), as lessee, entered into a lease transaction (the “**Transaction**”);
 - (b) The Transaction involved eight (8) electric locomotives and ten (10) high-speed trainsets;
 - (c) The other parties to the Transaction included HNB Investment Corp. (“**HNB**”), an

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affiliate of Philip Morris Capital Corporation, as owner participant, Allfirst Bank, now M & T Bank, as indenture trustee, as well as Amtrak Trust HS-EDC-1, as lessor, with the trustee being Wilmington Trust Company (the “**Lessor**”), EDC as both loan participant and guarantor;

- (d) The Transaction included, amongst other contractual documents, a Lease of Railroad Equipment between Amtrak and the lessor (the “**Lease**”) and a Guarantee Agreement between HNB and EDC (the “**Guarantee**”);
- (e) The Guarantee states that it is governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein;
- (f) On or about December 15, 2017, HNB sent a written demand to EDC under the Guarantee (the “**Demand**”). The Demand asserted that Amtrak had defaulted under the Lease by: (1) failing to pay the Casualty Value after a Casualty Occurrence with respect to certain locomotives leased under the Lease; and, (2) failing to comply with equipment use and maintenance requirements of the Lease;
- (g) HNB demanded that EDC, as guarantor under the Guarantee, immediately pay US\$93 million to HNB, as beneficiary under the Guarantee;
- (h) The Guarantee requires the occurrence of a Triggering Event, as defined in the Guarantee;
- (i) There is no obligation for EDC to pay any sum under the Guarantee unless a Triggering Event has occurred and is continuing;

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- (j) The onus of proof to demonstrate that a Triggering Event has occurred and is continuing is on HNB;
 - (k) The existence of a Triggering Event is disputed by EDC and Amtrak;
 - (l) While the Triggering Event is in dispute, no amounts are immediately due and payable by the Applicant, as has been demanded by HNB;
 - (m) Amtrak is named herein as a respondent as it is a necessary party whose rights may be affected by the outcome of this application;
 - (n) In the alternative, this application should be converted into an action so that the issue of whether EDC has any liability under the Guarantee may be determined at trial, with such directions as are just;
 - (o) If this application is converted into an action, leave should be granted and directions given to the Applicant to file a fresh Statement of Claim;
 - (p) The *Rules of Civil Procedure* of Ontario, including Rules 5.03, 14, 14.05(3)(d), 14.05(h), 38.10 and Rule 17.02(f) for service of this originating process upon a party outside of Ontario, and section 97 of the *Courts of Justice Act* of Ontario;
 - (q) Such other and further grounds as counsel may advise.
3. The following documentary evidence will be used at the hearing of the application:
- (a) Affidavit of Sean Mitchell and exhibits thereto;

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(b) Such further and other documentary evidence as counsel may advise.

March ¹³__, 2018

FASKEN MARTINEAU DuMOULIN LLP

Lawyers

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Lawyers for the Applicant

EXPORT DEVELOPMENT CANADA

-and- HNB INVESTMENT CORP.

Applicant

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Ottawa

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